IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7705 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NATIONAL BUILDINGS CONSTRUCTION CORPORATION LTD. - Petitioner(s)

Versus

VITHALBHAI CHHAGANBHAI - Respondent(s)

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Appearance :

MR KM PATEL for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 11/08/2005

ORAL JUDGMENT

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1.0. Though served none appeared on behalf of the respondent.

1. This petition is directed against the judgment and award dated 12th March, 1998 passed by the Labour

Court, Vadodara in Reference [L.C.V.] No. 432/86, whereby the Labour Court has granted reinstatement with 50% back wages.

2. The short facts of the case are that the respondent was appointed as Mason on daily wage basis. On completion of the project the respondent including other workmen were relieved from the service. Thus, the services of the respondent came to be terminated w.e.f. 31st January, 1986.

2.1. Being aggrieved by the said action, the respondent along with other workmen raised an industrial dispute which was ultimately referred to the Labour Court, for adjudication. The Labour Court after considering the materials produced before it, passed the impugned award. Hence, this petition.

3. I have heard the learned counsel for the petitioner and have perused the materials produced on record. While admitting the petition this Court on 14th October, 1999 had stayed the award qua payment of back wages alone. Since the respondent is already reinstated, in the interest of justice, it would not be appropriate

to disturb the said position at this stage. Hence, this Court is not considering this petition so far as the grant of reinstatement is concerned.

4. Having gone through the award, it appears that the Labour Court has not given any cogent reasons as to on what basis it has awarded back wages to the respondent. However in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p. 176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.1. In case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005(6) S.C.C. p. 137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Thus, I am in complete agreement with the reasonings adopted and findings arrived at by the Labour Court, and find no reason to interfere.

5. In the result, the petition is partly allowed.

The award dated 12th March, 1998 passed by the Labour Court, Vadodara in Reference [L.C.V.] No. 432/86 qua back wages is quashed and set aside and rest of the award is confirmed. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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